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August 15, 2019

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By ECF

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Brady v. Ostrager*, No. 7:19-cv-07122-LGS

Dear Judge Schofield:

This Office represents Justice Barry R. Ostrager in the above-referenced action. In accordance with Section I.B.1 of Your Honor's Individual Rules and Procedures, we write to advise the Court that Plaintiff James H. Brady is barred by a February 2017 filing injunction from commencing this action without obtaining leave from this Court. *See Brady v. Goldman*, No. 16-cv-2287 (GBD) (SN), 2017 WL 497083, at *2 (S.D.N.Y. Feb. 3, 2017), *aff'd*, 714 F. App'x 63 (2nd Cir. 2018) (summary order). Because Plaintiff has not complied with this pre-filing requirement, we respectfully request that the instant action be dismissed with prejudice.

In February 2017, Judge George B. Daniels of this Court enjoined Plaintiff from "filing new actions in the Southern District of New York that relate in any way to [a] cooperative's air rights appurtenant to [Plaintiff's] cooperative unit at 450 West 31st Street, New York, New York, or the conduct of any attorney, judicial officer, government official, or other third party in relation to such rights." *Id.* Judge Daniels instructed that this "injunction should be broadly construed to bar the filing without leave of this Court of any case, against any defendant that has as a factual predicate the cooperative's air rights appurtenant to Plaintiff's penthouse unit, or any of the collateral actions that have arisen from it." *Id.*

Here, Plaintiff seeks monetary damages against Justice Ostrager for allegedly taking part in a "retaliatory conspiracy" against him while presiding over a commercial dispute in New York Supreme Court, captioned as *IGS Realty Co. v. Brady*, No. 603561/09 (Sup. Ct. N.Y. Cnty.) (the "*IGS Realty Lawsuit*"). This is the third lawsuit Plaintiff has commenced in this Court

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challenging the state courts' adjudication of the *IGS Realty* Lawsuit. The first lawsuit, *Brady v. DiFiore*, No. 19-CV-4380-ER (S.D.N.Y.),¹ was dismissed by Judge Edgardo Ramos in May 2019 on the ground that it "squarely falls among those types of actions that Judge Daniels, in *Brady*, No. 16-CV-2287 (GBD) (SN), specifically enjoined Plaintiff from filing without obtaining the Court's leave." Order of Dismissal, *Brady v. DiFiore*, No. 19-CV-4380-ER (S.D.N.Y. May 22, 2019), ECF No. 4. In dismissing that action, Judge Ramos warned Plaintiff "that if he continues to disregard the filing injunction [], the Court may impose additional sanctions on him, including monetary penalties." *Id.*

The same conclusion was reached by Magistrate Judge Barbara Moses in *Brady v. Berman*, 18-cv-8459 (S.D.N.Y.). There, Plaintiff alleged, among other things, that Justice Ostrager conspired with S.D.N.Y. United States Attorney Geoffrey Berman by refusing to properly apply the law in the *IGS Realty* Lawsuit. In a Report and Recommendation dated August 2, 2019, Magistrate Judge Moses concluded the action was "barred—in its entirety—by the February 3, 2017 injunction, issued in *Brady v. Goldman*." *Id.* at *13, ECF No. 35. In recommending dismissal, Magistrate Judge Moses reasoned "[t]he injunction extends to the entire action – including plaintiff's claims based on *IGS Realty* ... – because it bars any 'new actions,' not just any 'new claims,' relating 'in any way' to the air rights dispute." *Id.*

For the same reasons, this action is barred. The Court's 2017 filing injunction enjoins Plaintiff from filing "any collateral actions" in this district "relating in any way to the air rights dispute." *Id.* As two judges in this district have now concluded, Plaintiff's claims relating to the *IGS Realty* Lawsuit fall squarely within the scope of this filing injunction.² Because the claims in this action arise from alleged acts taken by Justice Ostrager while presiding over the *IGS Realty* Lawsuit, Plaintiff is enjoined from asserting them here unless and until he obtains leave from this Court. Plaintiff has not complied with this pre-filing requirement. Consequently, this action is barred, and should be dismissed with prejudice.

Thank you for your time and attention in this matter.

Respectfully submitted,

/s/

Jonathan D. Conley
Assistant Attorney General

¹ In *Brady v. DiFiore*, Brady alleged that Chief Judge DiFiore and Associate Judge Garcia participated in a "retaliation conspiracy fraud scheme" in which they "willfully and knowingly created unlawful debt against Plaintiff by intentionally refusing to adjudicate Plaintiff's defenses to Personal Guarantees" in the *IGS Realty* Lawsuit presided over by Justice Ostrager. See Compl., *Brady v. DiFiore*, No. 19-CV-4380-ER (S.D.N.Y. May 22, 2019), ECF No. 1 ¶¶ 11, 47, 54, 112–123.

² See Report & Recommendation to the Hon. Valerie E. Caproni, *Brady v. Berman*, 18-cv-8459 (S.D.N.Y. Aug. 2, 2019), ECF No. 35; Order of Dismissal, *Brady v. DiFiore*, No. 19-CV-4380-ER (S.D.N.Y. May 22, 2019), ECF No. 4.

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